

Bailey, Marcia

From: Marcia <[REDACTED]>
Sent: Wednesday, June 04, 2014 5:24 PM
To: Bailey, Marcia
Subject: FW: mindy

From: [REDACTED]
To: [REDACTED]
Subject: RE: mindy
Date: Wed, 13 Mar 2013 12:11:00 -0700

This is troubling to me. I expressed valuing any feedback YOU might have,
and your only response is to state that you'd like to know [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

=====

From: [REDACTED]
To: [REDACTED]
Subject: RE: mindy
Date: Wed, 13 Mar 2013 11:47:14 -0700

Just wondering what Eli has to say about this exchange. ??

From: [REDACTED]
To: [REDACTED]
Subject: FW: mindy
Date: Wed, 13 Mar 2013 08:16:09 -0700

Just now completed and sent to Dave.
As I remark at the end .. such a shame.

:(

(pls share any occurring feedback that you experience)

From: Privacy FOIA (b) (6)

To: bricklin@bnd-law.com

CC: Privacy FOIA (b) (6)

Subject: RE: mindy

Date: Wed, 13 Mar 2013 08:01:22 -0700

Dave,

Your statement is clear, and I thank you for that, but it is also clear that the overview of the situation, your role in it, that you are *now* presenting is *different* from that which you presented as the working model for going forward, earlier.

The image model that you offered at the outset of the current arrangement, and that we had been proceeding under up until now, was *not* that you would sit like a lump in the background doing absolutely nothing, unless paid, until the end; it was, rather, that you would remain watchful and work to stay current and aware of developments such that if anything arose that, in your words, "might in any way potentially negatively affect the outcome of litigation relating to the complaint that we have brought against them" that you would, in order to protect "our" interests, step in and either caution, and/or advise, and/or respond directly to the opposing attorneys. This made absolute (common) sense, and that is what I signed on to. Your new formulation, outlined below, which, if I'm understanding you rightly, is to sit and do nothing even if what you are witnessing is a complete gutting of any advantage that we may carry in the case due to my (welcome) lack of formal legal training, despite your knowledge at any given turn of what **could** be readily done (or not done) to retain that advantage, runs utterly contrary to common sense, and, frankly, to what we discussed and agreed upon, and to anything that I would have knowingly signed on to.

Further, what you have done here is to knowingly proclaim yourself to be a willing obstacle to protecting, much less to maximizing, any advantage that 'our side' may hold in this case. You yourself admit, below, that the case itself, unlike your usual cases, is unique in that it is, in your words, still 'unfolding'. When you told me in a phone conversation a year and a few months ago that "We are now 'partners' and I'll be working for myself now; not for you but for me .. to maximize my own gains. You got that?", I asked you what that meant in terms of how we would proceed. You stated that there would now be two tracks: one was the case, the lawsuit itself, and the other was my continuing struggle with the opposing attorneys around ongoing remediation protocol, and that you would (again) willingly and professionally respond to "anything in the latter *that was case related* -- anything that arose which *could potentially negatively affect the outcome of the litigation*". This made me nervous as I could see that this would now necessarily bring our very individual interpretations into play, and the past year's interactions have clearly validated the legitimacy of those feelings. I have repeatedly asked you if we could somehow clarify the sketchy "case -vs- non-case related" situation, and you have repeatedly dismissed my concerns -- most often simply by a total failure to reply.

The "partner" designation, by the way, which you only informed me of after our basic verbal agreement to sue, is really just a travesty. We would, after all, be proceeding in a field of endeavor clearly determined and dominated by a language in which you were trained and I was not! I was, therefore, suddenly placed at an unfair disadvantage in all matters going forward. My immediate realization was that I would now be forced to "trust" you in a way that I really should not have been forced to, and despite your just having stated "This means that I am no longer looking out for you -- I am now looking out for me!" So, you now 'had' me -- and, for obvious reasons as old as life itself, you were now happy and comfortable with 'our new arrangement', and ready to proceed apace.

Jumping forward to now -- you are unabashedly stating that, unless I open my wallet, where earlier it was not required, your plan now is simply to hang around waiting, refusing to support the integrity of the case

in any way. That you will simply 'sit on it' -- standing by mutely until everything is done and the dust has settled -- and only then will you bother to turn your attention to whatever then *remains*, and to take a closer look to see if there still may be any juice left for you to suck out of it. You even articulate that at THAT point, after having sat by and done nothing -- contrary to your original agreement to honor the continuing value of the case -- if you see that my uninformed actions have in some way led to a measurable depletion in its worth, you will then go ahead and exercise your right to withdraw from your (faux) commitment to legal representation and simply walk away. This does not actually strike me as ethically sound behavior, but it's finally looking quite like I'll have to be checking my take on this with nearby others in your field.

Whenever it was that this switch in your own private game-plan occurred -- the one that resulted in the shift in your intentions from safeguarding the continued value of the case at hand throughout the process of it's current 'unfolding', to standing by mutely and inactively even if that meant the silent witnessing of its unmistakable disembowelment before your very eyes, in MY view, at THAT point, you owed it to 'your partners' to inform them of your sudden, inner, unilateral 'revision' of the rules. It's quite a fundamental mid-course alteration -- that which you clearly outline, below. And without previous notice, discussion or consultation of any kind. What a dreadful shame.

Aaron Smith

=====

From: bricklin@bnd-law.com

To: Privacy FOIA (b) (6)

CC: Privacy FOIA (b) (6)

Subject: RE: mindy

Date: Tue, 12 Mar 2013 22:27:24 +0000

Clients frequently come to me after an event has happened and retain me to seek damages. I can't un-do what led to the damage claim. This case is different, sort of. You have retained me on a contingency basis to represent you on the damage claim, but the events that lead to that claim are still in motion. Because the events underlying the damage claim are still unfolding, the damage case I'm working on has been stayed by court order until August 25. While that case is on hold, you are shaping the record that will become the grist for the damage claim. You have not asked me to advise you regarding how to best comport yourself at this stage and have pointedly and repeatedly refused to retain me for that purpose. I am simply making clear that you have retained me on a contingency basis to represent you vis a vis whatever damage claim you may have when the stay expires in August. You have not retained me to guide you through the process leading up to the damage claim. That's your choice. While I'm available if you want to pay me for my time, I'm not willing to provide consultation and negotiation services on a contingency basis and you're not willing to pay me for it on an hourly basis. So, by default, you have decided to guide yourself through this process and I will pursue whatever damages claim remains when you are done.

Conceivably, if you do significant damage to your damage claim, I could withdraw from representing you on the damage claim, but to the limited extent of my knowledge of your words and actions, I don't think you are causing irreparable harm to your claim (though I don't know that you are maximizing it either). I'll sort all that out when this stage is complete and the litigation resumes.

David Bricklin

Bricklin & Newman, LLP

1001 Fourth Avenue, Suite 3303
Seattle, WA 98154
1-206-264-8600
1-206-264-9300 (fax)
bricklin@bnd-law.com
<http://www.bnd-law.com>

Confidentiality Notice: This e-mail may contain confidential and privileged information. If you have received this message by mistake, please notify me immediately by replying to this message or telephoning me, and do not review, disclose, copy or distribute it. Thank you.

From: A. SMITH [mailto:**Privacy FOIA (b) (6)**]
Sent: Tuesday, March 12, 2013 2:31 PM
To: Dave Bricklin
Cc: Elijah Smith
Subject: RE: mindy

It sounds to me like you are attempting to indicate that this will effect the case in the long run -- or may. As such, my understanding is that you are professionally bound to enter into the fray and work to assure that matters are conducted on our end such that we stand the best chance of coming out as far ahead as may be possible in the end.

Personally, I do not understand for a moment how you can write to say "opposing counsel's view is that this matter, if unattended to professionally/legally, will end up damaging our existing suit against them" and in the same communication state that you are not reading or engaging due to my inability to pay you. I am, on the one hand, glad that you have been straightforward in declaring this -- but I do see it as an abnegation of your obligation as our attorney, working on contingency, in the case that we, at your strong recommendation, have brought against them.

Summary: You have just declared that there is strong indication that this currently interactive phase will negatively affect our damage suit in the long run; simultaneously you are stating that action related to it must be undertaken NOW to have any remedial effect on proceedings. In addition, you are stating that you are unwilling to take action as contingency counsel on the case.

(communication received -- thank you)

???

=====
=====

From: bricklin@bnd-law.com
To: **Privacy FOIA (b) (6)**
CC: **Privacy FOIA (b) (6)**
Subject: RE: Re: mindy

Date: Tue, 12 Mar 2013 20:22:12 +0000

By the way, Mindy's view is that Aaron's actions and words are going to come back to haunt him if our damage action. Because you don't want me to engage me to assist with this process, I'm not reviewing these materials and not providing you with any advice (except when requested, as for the wording of the access agreement). The result is that when this phase is done and the damage action commences, both sides will have to live with the beds they made for themselves. It will be too late then for me to advise you how you might have worded things differently or taken other actions to strengthen your claim. I'm not saying you are doing anything to undermine your claim; I'm saying that because I'm not reviewing things, I'm unable to advise you on what you might do to maximize your position. If you have any questions about this, let me know.

David Bricklin

Bricklin & Newman, LLP
1001 Fourth Avenue, Suite 3303
Seattle, WA 98154
1-206-264-8600
1-206-264-9300 (fax)
bricklin@bnd-law.com
<http://www.bnd-law.com>

Confidentiality Notice: This e-mail may contain confidential and privileged information. If you have received this message by mistake, please notify me immediately by replying to this message or telephoning me, and do not review, disclose, copy or distribute it. Thank you.

From: Elijah Smith [[mailto:Privacy FOIA \(b\) \(6\) \]](mailto:Privacy FOIA (b) (6)])
Sent: Monday, March 11, 2013 6:32 PM
To: Dave Bricklin; A. SMITH
Subject: Fwd: Re: mindy
See the second paragraph in the email you sent, below.

Now may be the time to let Mindy know that "if they choose not to deal with Aaron directly, they won't have any one to deal with at all".

Thanks!

----- Original Message -----

Subject:Re: mindy
Date:Thu, 24 Jan 2013 12:43:19 -0800
From:Elijah Smith
To:Dave Bricklin
CC:A. SMITH

Thanks for the heads up; I'll get back to you as soon as I can talk to Aaron about this.

On 1/24/13 12:39 PM, Dave Bricklin wrote:

Mindy left me a msg yesterday along the lines of: "Negotiating with Aaron is difficult and impacts the litigation, so we've returned to our position that it's not appropriate for us to communicate with Aaron directly; we'll be dealing with you."
How do you want me to proceed? I can tell her (again) that the bar rules do not ban her from dealing with Aaron directly as long as I consent, which I do, so if they choose not to deal with Aaron directly, they won't have anyone to deal with at all and won't be able to get this resolved. Do you want me to tell her that or something else? Let me know. Thank you.

David Bricklin
Bricklin & Newman, LLP
1001 Fourth Avenue, Suite 3303
Seattle, WA 98154
1-206-264-8600
1-206-264-9300 (fax)
bricklin@bnd-law.com
<http://www.bnd-law.com>

Confidentiality Notice: This e-mail may contain confidential and privileged information. If you have received this message by mistake, please notify me immediately by replying to this message or telephoning me, and do not review, disclose, copy or distribute it. Thank you.